

United States District COURT
Southern District Of Texas

United States Courts
Southern District of Texas
FILED

JAN 10 2022

Nathan Ochsner, Clerk of Court

Wayne Smith , Plaintiff

vs.

David Hittner And MTGLQ Investors,LP

Defendants,

Case No.: 4:21-CV-3079 NOS 440

MOTION TO RECUSE

NOW COMES the above-named, Plaintiff, Wayne Smith, Petitioner herein, and moves to recuse Judge Charles Eskridge and Sam S. Shelton from the above-entitled matter.

MEMORANDUM OF POINTS AND AUTHORITIES

1) 28 USC § 455 states:

- a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

A- Is a party to the proceeding, or an officer, director, or trustee of a party;

B-Is acting as a lawyer in the proceeding;

C- Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

D- Is to the judge's knowledge likely to be a material witness in the proceeding.

2) The U.S. Supreme Court made the following ruling:

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." From Marshall v. Jerrico, Inc. (446 US 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980))

3) The U.S. Supreme Court also has ruled the following:

“State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law.”

From *Stone v. Powell* (428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976))

This motion for recusal is also made pursuant to of the Tex. R. Civ. P. 18a Code of Judicial Conduct. Also, the above is applicable to this court pursuant to Article VI of the United States Constitution.

The United States Constitution also guarantees an unbiased Judge who will always provide litigants with full protection of all of their natural, God-given, unalienable rights. Therefore, Petitioner respectfully demands that the above-mentioned Judges recuse themselves in light of this evidence detailing prior unethical and/or illegal conduct or conduct which gives Petitioner a solid pretext to believe the above-mentioned Judge cannot hear the above case in a fair and impartial manner.

4) Wayne Smith, a living and self-aware individual, is hereby moving the above-named Judges to recuse themselves on the basis of a lack of impartiality to this matter and, thereby, has created a conflict of interest in this matter. The above-mentioned Judges have deliberately violated other litigants' personal liberties in the past and/or has wantonly refused to provide due process and equal protection to all litigants before the court or has behaved in a manner inconsistent with that which is needed for full, fair, and impartial hearings.

4,

Respectfully submitted

Wayne Smith

Wayne Smith / Plaintiff 1-10-22

By: Wayne Smith, ProSe

Wayne Smith, ProSe

Authorized Petitioner

Certificate of Service (s)

I Wayne Smith, hereby certify that a true and correct copy of the enclosed and foregoing has been delivered to or will be shortly to MTGLQ Investors, LP % Legal Department , (Golden Sacka) 200 West St., New York, NY 10282,. On this the 10th Day of 2022 by certified Mail, In accordance with there rules governing the same.

Wayne Smith

5723 Painted Trail Drive
Houston, Texas 77084

I Wayne Smith, hereby certify that a true and correct copy of the enclosed and foregoing has been or will be shortly delivered to Mr. David Hittner / Judge David Hittner, 600 Travis Street, Suite 4800, Houston, Tx 77002, On this the 10th Day of 2022, by certified Mail, In accordance with there rules governing the same.

Wayne Smith

5723 Painted Trail Drive
Houston, Texas 77084